

PHILLIP MORRIS,)	No. C 99-20535 JF (PR)
)	
Petitioner,)	ORDER DENYING
)	CERTIFICATE OF
vs.)	APPEALABILITY; DENYING
)	MOTION TO PROCEED IN
)	FORMA PAUPERIS ON
)	APPEAL
A.C. NEWLAND, Warden,)	
)	
Respondent.)	
<hr/>)	(Docket Nos. 57, 59)

Order Denying Certificate of Appealability; Denying Motion to Proceed in Forma Pauperis on Appeal
P:\pro-se\sj.jf\hc.99\Morris535dencoa 1

1 of the instant case. The Court denied Petitioner's motion for relief from judgment and
2 motion to vacate judgment. The Court concluded that Petitioner failed to establish any of
3 the grounds for relief pursuant to Rule 60(b). The Court noted that the Court of Appeals
4 affirmed this Court's dismissal of the instant petition.

5 In September 2006, Petitioner filed a notice of appeal based on the Court's order
6 denying Petitioner's motion for relief from judgment and motion to vacate judgment.
7 Petitioner also filed a request for a certificate of appealability and a motion to proceed in
8 forma pauperis on appeal. The Court will DENY the request for a certificate of
9 appealability (docket no. 57) and DENY Petitioner's motion to proceed in forma pauperis
10 on appeal (docket no. 59).

11 DISCUSSION

12 Petitioner filed a notice of appeal and a request for a certificate of appealability
13 based upon this Court's denial of his motion for relief from judgment and motion to
14 vacate judgment.

15 Upon the filing of a notice of appeal and a request for a certificate of appealability
16 (COA), the district court shall indicate which specific issue or issues satisfy the standard
17 for issuing a certificate, or state its reasons why a certificate should not be granted. See
18 United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997) (citing 28 U.S.C.
19 §2253(c)(3)).


20 The Court dismissed the instant petition as untimely pursuant to 28 U.S.C. §
21 2244(d)(1). The Court denied Petitioner's motion for relief from judgment and motion to
22 vacate judgment because Petitioner failed to establish any grounds for relief pursuant to
23 Rule 60(b). The Court of Appeals affirmed this Court's dismissal of the instant petition
24 and Petitioner's case is closed.

25 Petitioner has not shown "that jurists of reason would find it debatable whether the
26 petition states a valid claim of the denial of a constitutional right and that jurists of reason
27 would find it debatable whether the district court was correct in its procedural ruling."
28 Slack v. McDaniel, 120 S. Ct. 1595, 1604 (2000).

1 Accordingly, Petitioner's request for a certificate of appealability (docket no. 57) is
2 DENIED. Based upon the Court's denial of appealability, Petitioner's motion to proceed
3 in forma pauperis on appeal (docket no. 59) is DENIED. The Clerk shall transmit the
4 file, including a copy of this order, to the Court of Appeals. See Fed. R. App. P. 22(b).¹

5 IT IS SO ORDERED.

6 DATED: 2/14/07


JEREMY FOGEL
United States District Judge

27 ¹ Petitioner may then ask the Court of Appeals to issue the certificate, see Fed. R.
28 App. P. 22(b)(1), or if he does not, the notice of appeal will be construed as such a
request, see Fed. R. App. P. 22(b)(2).

1 This is to certify that a copy of this ruling was mailed to the following:

2 Phillip Morris, Jr.
3 H-59819
4 CA Mens Colony -East
5 P.O. Box 8101
6 San Luis Obispo, CA 93409

7 Peggy S. Ruffra
8 CA State Attorney General's Office
9 455 Golden Gate Avenue
10 Suite 11000
11 San Francisco, CA 94102-7004
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28